

Memo

To: Commerce Committee
From: Robert J. Brothers, Jr., Acting Executive Director
Date: February 10, 2009
Re: **HB 5046, AN ACT CONCERNING THE SMALL-CONTRACTOR SET-
ASIDE PROGRAM AND THE DEFINITION OF SMALL BUSINESSES**

The Commission on Human Rights and Opportunities is sympathetic to the intent of HB 5046, AN ACT CONCERNING THE SMALL-CONTRACTOR SET-ASIDE PROGRAM AND THE DEFINITION OF SMALL BUSINESSES, but believes the bill falls short in several ways.

The contractor set-aside program is intended to aid small and minority owned businesses so that economic opportunities in contracting with the State of Connecticut are spread to those people who have been traditionally kept out, intentionally or otherwise, from certain areas of commerce.

Currently, a small business may participate in the set aside program if it has annual earnings of less than fifteen million dollars per year. Under this bill, a micro business would be eligible to participate if it had annual earnings of less than three million dollars per year. Thus, micro-businesses are already covered by the set-aside program as small businesses under existing law. To create a subcategory of micro business within the set-aside program would violate the longstanding purpose of the program. Micro businesses are not by their size the victims of historical discriminatory practices or outcomes.

Although it is well intentioned to increase the amount of the set-aside from 25% to 35% to provide additional support to micro businesses, without a clear legal basis to support the increase, the increase in the set-aside proportion may be viewed unfavorably by courts as arbitrary. The legislature should not take any action that would threaten the small businesses already benefiting from this valuable program.

(over)

Item (2) of the proposal also has ramifications to the overall program particularly as it relates to the calculation of how well set-aside goals have been met.

The Commission on Human Rights and Opportunities would suggest that the most significant barrier to small businesses getting state contracts is the qualification process which effectively screens out those firms unable to handle the demands of large projects or services. At present there is little to induce a large firm to employ small firms to execute portions of a contract if the contractor is large enough to do the total project, or if it can be parceled out to a minimal number of subcontractors. Overhead, efficiency and liability are just a few of the factors that hinder relations between large firms and those that this bill would define as micro businesses.

Either streamlining the qualification process for small businesses used by state agencies, or the provisions of tax credits or other incentives to large firms using competent smaller entities would be we believe far preferable to amending the existing set-aside program

Thank you for the consideration of the Commission's views on this matter.